



Rachael Earle

Call: 2013

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Clerks' Details

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Qualifications and Appointments

- LLM in Commercial Law (First Class) (Ranked 1st in College), Darwin College, University of Cambridge
- Bar Professional Training Course (Very Competent) BPP Holborn
- LLB Law with French Law (First Class), University College London
- Darwin College Dean's Award (2014)
- Blackstone Entrance Exhibition (2012)

“Works extremely hard, technically very good, excellent on her feet.”

The Legal 500 2021

Memberships

- Chancery Bar Association
- Commercial Bar Association
- Insolvency Lawyers' Association
- R3: Association of Business Recovery Professionals

Practice Overview

Rachael is an insolvency and restructuring specialist; her practice encompasses all areas of individual and corporate insolvency and she has considerable experience in dealing with complex directors' misfeasance claims (in which she acts both for Liquidators and for defendant directors).

She is ranked as a Rising Star in The Legal 500 2021, which notes she *"works extremely hard"* is *"technically very good"* and is *"excellent on her feet"*. She is also *"very tough and doesn't back down"*.

Rachael is also frequently instructed on company and commercial disputes, particularly in cases involving allegations of fraud and dishonesty and applications for urgent injunctions.

She appears regularly in the High Court, both as sole and junior counsel.

Notable ongoing and recent cases include:

- Acting for Joint Administrators on an application to Court for the approval of a complex distribution plan in respect of client funds which are being held after the failure of a debt management firm.
- Acting for Joint Liquidators in a £2 million fraudulent trading and misfeasance claim against former directors of a national firm of solicitors who misled clients into investing into a fraudulent scheme.
- Acting for Joint Liquidators in a misfeasance claim against former directors who caused the company to enter into EBT tax avoidance schemes, worth over £1 million.
- Acting for Joint Liquidators in a misfeasance claim against a former director who misappropriated over £3 million of company property; the case has involved applications for both proprietary and *Chabra* injunctions.
- Advising Joint Liquidators on claims against former directors who diverted a significant business opportunity (a development worth £14.5 million).
- Acting for Joint liquidators in a £1 million fraudulent trading and misfeasance claim against former directors involved in a complex MTIC scheme.
- Acting for a minority shareholder on a section 994 petition, who has been wrongly excluded from the management of the Company and from dividends to which he was properly entitled worth £3 million.



Practice Overview continued

- Led in a \$2.5 million arbitration relating to a telecommunications contract dispute involving allegations of fraudulent misrepresentation.
- Acting in a £2 million claim for breach of a Sale and Purchase Agreement where the vendor is alleged to have fraudulently concealed key documents during disclosure.

Insolvency

Rachael is often instructed on insolvency cases which are of a complex or urgent nature. She appears regularly in the High Court before ICC Judges.

Her experience extends to fraudulent and wrongful trading claims, misfeasance claims, antecedent transactions, challenges to office holders' remuneration, orders for possession and sale in bankruptcy proceedings where there are issues relating to beneficial ownership or equity of exoneration, as well as both rescission and annulment applications and appeals against adjudications on proofs of debt.

Recent work includes:

Corporate Insolvency

- Currently advising investment managers on the status of client funds after Reyker Securities plc was placed into special administration.
- Currently acting for Joint Administrators in respect of an application to Court for approval of a complex distribution plan for client funds which are being held after the failure of a debt management firm.
- Currently advising the Joint Liquidators of a national charity on the correct characterisation of £6 million in donations received by the charity and whether they constitute restricted funds or, alternatively, form part of the estate.
- Currently acting for Joint Liquidators on fraudulent trading and misfeasance claims against former directors of a building company who defrauded elderly customers. Claims in the liquidation exceed £5 million.
- Currently acting Joint Liquidators on claims against former directors who operated a fraudulent VAT scheme, failing to declare some £3 million to HMRC.
- Currently acting in an application by members of a company (now in liquidation) against the office holders on the grounds that the remuneration charged and expenses incurred are excessive.
- Currently acting on behalf of Joint Liquidators to oppose an application for their removal from office in circumstances where the creditors' motives in making this application are improper.
- *Re Houston Management Facilities Limited (2020)*. Acted on behalf of the Joint Liquidators in obtaining a proprietary injunction against a former director and a Chabra injunction against his sibling.
- *DCL Hire Limited (in liquidation) (2019)*. Led in a 5 day misfeasance trial against a former director who made significant payments out of the Company for nil consideration on the instruction of a shadow director.
- *Parkers Developments Limited (2019)*. Acted on behalf of two directors in defending a misfeasance and unlawful return of capital claim in respect of their involvement in an EBT scheme worth over £1.2 million.
- *Pico's Limited (2019)*. Acted on behalf of the Company in seeking an urgent validation order to allow the Company to continue trading pending the first hearing of the winding up petition.
- *So Sienna Limited v (1) HMRC (2) The Official Receiver (2019)*. Acted for the company in an application for the rescission of a winding up order and dismissal of the petition.
- *HS Works Limited (in liquidation) (2018)*. Led in a 5 day High Court trial against a former administrator for breach of his schedule B1 and fiduciary duties, worth £4 million.



Insolvency continued

Personal Insolvency

- Currently advising Joint Trustees on the correct characterisation of funds held in the Bankrupt's bank account where a creditor claims that those funds are subject to a *Quistclose* Trust agreement.
- Currently acting for Joint Trustees in a £5 million claim involving a 'rainy day' trust deed which purports to transfer the Bankrupt's beneficial interest in his extensive London property portfolio to his children.
- Currently acting for Joint Trustees in respect of a creditor's challenge to their adjudication on his proof of debt worth over £1.5 million.
- Currently acting for Joint Trustees in an application for possession and sale where the family home is held in the sole name of the Bankrupt's wife but the Bankrupt has a beneficial interest by virtue of his financial contributions.
- Currently acting for Joint Trustees in a breach of trust claim against the Bankrupt's former business partner and a professional negligence claim against his former solicitors, worth over £4 million.
- Acted on behalf of Joint Trustees for an order for possession and sale of the Bankrupt's family home where his wife claimed a beneficial interest in the property and also that debts secured against the property should be applied against the Bankrupt's beneficial share only.

Commercial

Rachael undertakes a wide range of company and commercial work including all types of breach of contract claims (she has acted in a significant number of trials for TUJ defending breach of holiday contract claims and she has also acted both for and against construction companies in breach of contract claims), directors' disqualification proceedings, partnership disputes, shareholder disputes, unfair prejudice petitions and derivative claims.

Rachael has particular experience in dealing with claims involving allegations of fraud such as breach of trust claims, fraudulent misrepresentation claims, conspiracy claims, as well as knowing assistance and knowing receipt claims and economic tort claims.

Recent work includes:

- Currently advising a company on claims for breach of a confidentiality agreement and unlawful interference with its business interests, worth over £40 million.
- Currently advising on an unfair prejudice petition worth over £3 million where the majority shareholders have excluded the minority shareholder from the management of the Company and also from dividend payments (to which he was properly entitled), this has required forensic accounting evidence on the finances of the Company.
- Currently advising on a partnership dispute worth over £1.2 million which involves allegations of long term fraud and concealment by one partner.
- Successfully defended a construction company in a 4 day trial / breach of contract claim worth £1 million.
- *Kilimanjaro Limited v Dikoh* (2020). Successful application for a freezing injunction against a former employee who had misappropriated significant sums of company money.
- *Kwaji v Shaw, Balogun* (2018). Successfully opposed an application for an injunction in respect of a jointly owned property.
- *Re M2 Property Invest Limited* [2018] B.C.C 324. Successful application for approval of the merger of a Polish company with its English parent company.
- *Frank Warren v Paul Smith* (2018). Led in an arbitration appeal before the Boxing Board of Control concerning manager / promoter contracts and issues of breach of fiduciary duty and the duty of trust and confidence.